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EXAMINER	
VAUGHN, GREGORY J	
ART UNIT	**PAPER NUMBER**
2178	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/897,292	COHEN, GERALD I.	
	Examiner	Art Unit	
	Gregory J. Vaughn	2178	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *40-58* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *40-58* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Action Background

1. This action is responsive to the applicant's amendment, filed on 10/20/2005.

2. Applicant has cancelled claims 1-39; amended claims 41, 47, 48, 52 and 54; and added new claims 57 and 58.

3. Claims 40-58 are pending in the case, claims 40, 52, 54 and 57 are independent claims.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> *"The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention."*

5. Claims 57 and 58 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

6. **Regarding claim 57**, the amendment filed 10/20/2005 adds the following limitations: "*each menu being configured to be displayed to a user in it's entirety at the same time*" (preamble), "*each database record comprising sufficient data to enable said menu template modifier to generate a unique menu based on said menu template and the data in each database record*" (first limitation), "*enabling a user to select a unique database record*" (second limitation), "*the unique database record corresponding to the previously generated menu*" (third limitation). The examiner has reviewed the originally filed specification, and has failed to find support for the added limitations. Applicant is required to cancel the new matter in response to this office action.

7. **Regarding claim 58**, the amendment filed 10/20/2005 adds the following limitations: "*machine instructions, when executed by a processor, further cause the actuation of a specific key to execute an action*". The examiner has reviewed the originally filed specification, and has failed to find support for the added limitations. Applicant is required to cancel the new matter in response to this office action.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> *"The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention."*

9. Claim 57 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. The term *"sufficient data"* in claim 57 is a relative term, which renders the claim indefinite. The term *"sufficient data"* is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term *"sufficient data"* renders the "*database record*" limitation indefinite.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> "*A person shall be entitled to a patent unless –*
>
> *(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.*"

12. Claims 40-47, 51, 52 and 54 remain rejected under 35 U.S.C. 102(e) as being anticipated by McNally et al. US Patent 6,384,850, filed 9/21/1999, patented 5/7/2002 (hereinafter McNally).

13. **Regarding independent claim 40**, McNally discloses a menu template, a menu template modifier, and a menu database, where a menu is generated by the modifier based upon the template and the data in the database. McNally further discloses enabling a user to select a desired menu from the menu database. McNally recites: "*The inventive approach also includes templates for common modifiers that can be assigned to similar menu items. The preferred embodiment also supports multiple databases, thus providing for the creation and storing of different menu database on handheld devices such as breakfast, lunch or dinner menus. The user can then select the appropriate database to reflect the time of day*" (column 10, lines 6-13). McNally discloses in Figure 7, displaying the menu to a user (see reference sign 16), so that the user can select from a plurality of menu items (menu items are shown in Figure 7 as "*Dessert*", *Drinks*", "*Main*", "*Prev*" etc.), where a menu item has an event associated with it (shown as "*Main*") and causing the selected event to occur (in Figure 7, selecting the "*Main*" menu item would cause the display to change to the main menu).

14. **Regarding dependent claim 41**, McNally discloses the event as displaying an additional menu (as described above).

15. **Regarding dependent claim 42**, McNally discloses a sequencer component that determines in which a plurality of events should occur in Figure 7 (shown as the tabs at the top of the figure labeled "*Login*", "*Checks*", "*Order*", "*View*" and "*Pay*"). McNally further discloses the use of a timing function in Figure 4 at reference sign 12 (shown as "*Prep. Time*").

16. **Regarding dependent claim 43**, McNally discloses disabling sequencer and timer events so that a user can navigate through a sequence of menus more rapidly in Figure 7 (shown as the "Browse" button at the bottom of the figure). The browse screen is shown in Figure 1 of McNally.

17. **Regarding dependent claim 44**, McNally discloses a plurality of database records that define a plurality of sequential menus in Figure 1 at reference signs 2, 3 and 4 (shown as a "*Menu Tree*"). The Menu Tree shown in Figure 1 of McNally enables the use to select a sequence of menus (shown as "*Menu*" on the menu tree), a sequence of menu items (shown as "*Entrees*" on the menu tree), by selecting a menu item (for instance "*NY Strip*").

18. **Regarding dependent claim 45**, McNally discloses a tracker component that records each menu item selected in Figure 7 (shown as "*Select Guest to Order for*").

19. **Regarding dependent claim 46**, McNally discloses the generation of a report related to the items selected on a previous menu in Figure 4 (the report

shown in the figure would be generated upon a user selecting the "*Chicken Alaska*" menu item in a previous menu).

20. **Regarding dependent claim 47**, McNally discloses generating a report that includes each previously selected menu item in Figure 7 (shown as the tab labeled "View" at the top of the figure). The report could be used to provide results of a questionnaire comprising the menu items displayed to the user from which the user selected specific menu items.

21. **Regarding dependent claim 51**, McNally discloses an editing function with the menu template modifier that allows a user to edit a menu item in Figure 2 at reference sign 2 (shown as editable text boxes in the figure).

22. **Regarding independent claims 52, 54 and 57**, the claims are directed toward an article of manufacture, a system and a method, respectively, for the method of claim 40, and are rejected using the same rational.

23. **Regarding dependent claim 58**, McNally discloses executing an action by accessing data in a database record corresponding to a desired menu to enable the action to be executed as described above in reference to the rejection of claim 40.

Claim Rejections - 35 USC § 103

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> *"(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made."*

25. Claim 48 remains rejected under 35 U.S.C. 103(a) as being unpatentable over McNally in view of Mundell et al. US Patent 6,549,890, filed 8/29/1997, patented 4/15/2003.

26. **Regarding dependent claim 48**, McNally discloses a menu template, a menu template modifier, and a menu database, where a menu is generated by the modifier based upon the template and the data in the database; and enabling a user to select a desired menu from the menu database, as described above. McNally also discloses the use of a timer function that can be enabled and disabled by a user as described above. McNally fails to disclose the timer function controlling display of successive menus. Mundell discloses the timer control of successive displays in Figure 7, at reference sign 72 (shown as "*Screen Change Field*"). Mundell also recites: "*If a user of computer 14 wanted a display screen 22 to change upon 30 seconds if no other active link event is activated, she would select "30 seconds" from the pull down menu of screen change form field 79. If a user of computer 14*

wanted to start timer 52 upon the activation of a certain display screen 22, she would select "start timer" from the pull down menu of timer control form field 81" (column 8, lines 41-48).

Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made to use the timer teachings of Mundell with the menu system of McNally so that "*the data device can be easily programmed and re-programmed to be used for a plurality of different applications*" (Mundell, column 2, lines 64-67).

27. Claims 49, 50, 53, 55 and 56 remain rejected under 35 U.S.C. 103(a) as being unpatentable over McNally in view of Banerjee et al. US Patent 6,760,017, filed 10/16/1995, patented 7/6/2004.

28. **Regarding dependent claims 49 and 50**, McNally discloses a menu template, a menu template modifier, and a menu database, where a menu is generated by the modifier based upon the template and the data in the database; and enabling a user to select a desired menu from the menu database, as described above. McNally fails to disclose displaying the menu items in a spatial organization so that each item has a one to one relationship with the keys on a keyboard (claim 49) or the keys on a numeric keypad (claim 50). Banerjee discloses displaying the menu items in a spatial organization so that each item has a one to one relationship with the keys on a numeric keypad (of a keyboard) in figure 66 at reference sign 1632 (the menu mapped to the keypad is shown on the right hand side of the figure

where the keypad #1 is mapped to the "*End*" menu item, the keypad #3 is mapped to the "*page down*" menu item, etc.)

Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made to use the keypad menu item mapping of Banerjee with the menu system of McNally to provide an "*interface device that includes a display that can interface with a host computer in a stand-alone configuration or a host computer connected in either a wired or wireless local area network (LAN)*" (column 2, lines 16-19).

29. **Regarding dependent claims 53, 55 and 56**, the claims are directed toward an article of manufacture and a system, respectively, for the method of claims 49 and 50, and are rejected using the same rational.

Response to Arguments

30. Applicant's arguments filed 10/20/2005 have been fully considered but they are not persuasive.

31. **Regarding the rejected claims**, applicant argues that: "*applicant's novel approach, which is articulated in applicant's claims, but is not disclosed or suggested by McNally, is the use of a menu template that enables compact data storage of a plurality of menus to be achieved*" (page 7, last paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*enables compact data storage of a plurality of menus to be achieved*") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

32. **Also, regarding the rejected claims**, applicant argues that: "*in applicant's claim recitation, rather than storing a complete menu, an instruction set (i.e., a menu record or database record uniquely corresponding to a previously generated menu) is stored, such that a processor (e.g., acting as a menu template modifier) can use a menu template and the instruction set to re-create the menu immediately before it is displayed to a user*" (page 7, last paragraph to page 8, first paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to

show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*an instruction set (i.e., a menu record or database record uniquely corresponding to a previously generated menu)*" and "*a processor (e.g., acting as a menu template modifier)*" and "*use a menu template and the instruction set to re-create the menu*" and "*re-create the menu immediately before it is displayed to a user*") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

33. **Also, regarding the rejected claims**, applicant argues that: "*the instruction set is significantly smaller than the menu itself*" (page 8, first paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*instruction set is significantly smaller than the menu itself*") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

34. **Also, regarding the rejected claims**, applicant argues that: "*McNally completely fails to teach or suggest that memory resource savings can be achieved by saving instruction sets used to re-create a previously generated menu, rather than simply saving the menus themselves.*" (page 8, first

paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*memory resource savings can be achieved*" and "*saving instruction sets*" and "*saving the menus*") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

35. **Regarding independent claim 40**, applicant argues that: "*In accord with applicant's novel approach as defined by Claim 40, additional processing is required to display a menu that was previously designed, because the menu is not stored in a complete form. Instead, a menu record is stored, and the menu record contains sufficient information such that a processor (e.g., serving as the menu template modifier) can use the data contained in the menu record with the menu template to recreate or generate the menu immediately before it is displayed to the user*" (page 8, last paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*additional processing is required to display a menu*" and "*a menu that was previously designed*" and "*the menu is not stored in a complete form*" and "*a menu record is stored*" and "*the menu record contains sufficient information*" and "*a processor (e.g., serving as the menu template modifier) can use the data contained in the*

menu record with the menu template to recreate or generate the menu" and "*recreate or generate the menu immediately before it is displayed to the user*") are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

36. **Also, regarding independent claim 40**, applicant argues that: "*The menu template modifier, the menu template, and a database record are used to generate the desired menu, which had already been stored in the menu database as a database record, as opposed to being stored as the actual menu. McNally simply does not teach or suggest an equivalent process.*" (page 9, first paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*the desired menu, which had already been stored in the menu database as a database record*") are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

37. **Also, regarding independent claim 40**, applicant argues that: "*However, such a process simply is not equivalent to the steps recited in applicant's Claim 40, which as noted above, specifically recite that a user is enabled to*

select a desired menu from a menu database (clearly, the desired menu has already been developed, otherwise it could not have been stored in the menu database, albeit as a menu record or instruction set, rather than as the menu itself), and then the menu template, the menu template modifier, and the database record (the data actually stored in the menu database in place of storing the desired menu itself, to reduce the amount of data that must be stored) are used to reproduce the desired menu for display to a user" (page 9, second paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*the desired menu has already been developed*" and "*a menu record or instruction set*" and "*the database record (the data actually stored in the menu database in place of storing the desired menu itself*" and "*to reduce the amount of data that must be stored*") are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

38. **Also, regarding independent claim 40**, applicant argues that: "*McNally does not teach or suggest that a menu template and a database record defining an appearance and a functionality of the menu items included within the desired menu are required to re-create the desired menu for display to a user*" (page 9, second paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to show certain

features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*a database record defining an appearance and a functionality of the menu items are required*") are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

39. **Also, regarding independent claim 40**, applicant argues that: "*McNally's database record of different menu items and McNally's menu template are not used to retrieve a previously generated menu from storage, such that the previously generated menu can again be generated and displayed to a user*" (page 9, third paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*retrieve a previously generated menu from storage*") are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

40. **Regarding independent claim 52**, applicant argues that: "*Note that a user selects a menu in a database. Logically, such a menu has already been created, and at least a reference to it must exist in a stored form in the database for a user to be able to select it*" (page 10, second paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the

references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*a menu has already been created*" and "*at least a reference to it must exist in a stored form in the database*") are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

41. **Regarding independent claim 52**, applicant argues that: "*applicant's claimed process enables a plurality of menus to be defined and the information needed to recreate the plurality of menus stored in a format requiring fewer memory resources. Thus, these functions are patentably distinguishable from those disclosed by McNally*" (page 10, second paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*a plurality of menus to be defined*" and "*information needed to recreate the plurality of menus stored in a format requiring fewer memory resources*") are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

42. **Regarding independent claim 52**, applicant argues that: "*It should be noted that while in a particularly preferred embodiment, there is a one-to-one correspondence between a database record and a particular menu, so that each menu is associated with a unique database record, it should also be recognized that a plurality of different database records can be used to store a unique menu in a compressed format*" (page 10, second paragraph, of the amendment filed 10/20/2005). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*one-to-one correspondence between a database record and a particular menu*" and "*each menu is associated with a unique database record*" and "*database records can be used to store a unique menu in a compressed format*") are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

43. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

44. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Vaughn whose telephone number is (571) 272-4131. The examiner can normally be reached Monday to Friday from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen S. Hong can be reached at (571) 272-4124. The fax phone number for the organization where this application or proceeding is assigned is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory J. Vaughn
January 3, 2006

STEPHEN HONG
SUPERVISORY PATENT EXAMINER